ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	CC Docket No. 92-77
Billed Party Preference	)	
for 0+ InterLATA Calls	)	

COMMENTS OF THE COMPETITIVE TELECOMMUNICATIONS ASSOCIATION

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The Competitive Telecommunications Association ("CompTel"), by its attorneys, hereby comments on the Commission's Further Notice of Proposed Rulemaking ("*FNPRM*") in the above-captioned matter.[1]

I. SUMMARY

For several compelling reasons, the Commission should refrain from mandating a "billed party preference" ("BPP") system for "0+" operator-assisted interLATA calling. The BPP system would do far more harm than good and should be discarded once and for all. Originally proposed in 1986, before competition in operator services, before payphone competition, before CAP competition, before RBOC requests to provide interLATA services, before the availability of CIID cards and dial-around services like 800-COLLECT, and before TOCSIA, the BPP concept is now hopelessly

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[1] *Billed Party Preference for 0+ InterLATA Calls*, FCC 94-117 (June 6, 1994) (Further Notice of Proposed Rulemaking).

outdated. Even the BPP proponent whose Petition formed the basis for this rulemaking -- Bell Atlantic -- now opposes adoption of BPP.

Perhaps most importantly, the costs of BPP implementation are not offset by benefits of equal or greater value. In the *FNPRM*, the costs of BPP to ratepayers were understated by more than $190 million per year. Moreover, the annual savings were grossly overestimated, perhaps by more than $200 million. As a result, the *FNPRM*'s cost-benefit analysis erroneously found that BPP would save consumers more than it would cost. A closer analysis shows this conclusion to be egregiously inaccurate.

In addition, the *FNPRM*'s competitive analysis relies on incorrect assumptions regarding the practical ability of small IXCs to compete for traffic in a BPP environment and the purported vices of aggregator marketing. The *FNPRM* also fails to recognize adequately the adverse impact which BPP would inflict on competitive access providers ("CAPs"), intraLATA competition, credit card competition, and payphone competition. These anticompetitive expansions of the LEC monopoly would be especially ironic at a time when the Commission is striving to open local markets to competition and the Regional Bell Companies are arguing vociferously for entry into the competitive long distance marketplace.

BPP also will render obsolete the tens of millions of dollars invested by thousands of small payphone businesses in "smart" payphones, and the hundreds of millions of dollars TOCSIA required payphone owners, hotels and other aggregators to invest in unblocking. These harms would be inflicted by the Commission on

aggregators only two years after the agency's report to Congress that the unblocking plan which this investment was meant to implement was working effectively. Adoption of BPP would render this mammoth investment worthless and mandate yet another billion dollar-plus expenditure.

From a technical standpoint, the *FNPRM* also reflects a misunderstanding or unwarranted trivialization of the flaws in the ability of BPP to achieve the FCC's stated objectives. BPP will not, as conceived in the *FNPRM*, provide callers simplified access on a uniform nationwide basis. And where it does apply, it will introduce call processing delays ranging from six to 30 seconds. The *FNPRM* also erroneously minimizes the confusion and inconvenience caused by the need to use two operators on many live operator calls. Further, BPP will effectively preclude the introduction of many service enhancements on "0+" calls, such as those relying upon voice messaging and voice recognition. BPP will also inadequately address the occurrences of fraud and other problems associated with inmate phones. In short, BPP would be an FCC-mandated giant step backward in technology.

The many serious flaws in the *FNPRM*'s analysis are particularly harmful to the public interest because there are less costly and more effective alternatives available to achieve the Commission's goals. Indeed, the Telephone Operator Consumer Services Improvement Act of 1990 ("TOCSIA")[2] and the implementing FCC regulations have made much progress in addressing the concerns raised by the FCC in this proceeding.

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[2] Pub. L. No. 101-435, 104 Stat. 987 (1990) (codified at 47 U.S.C. § 226).

The fact is that in an overwhelming majority of calls carried today, the billed party is billed by the carrier of his choice and the rates are reasonable, as the Commission reported to Congress only two years ago.[3] In a sharp departure from the statements made to Congress, however, the *FNPRM* proposes BPP without giving serious consideration to the effectiveness of current regulation or the possibility of increased oversight of certain rates, including adoption of rate benchmarks. CompTel submits that TOCSIA gives the Commission the tools to adopt further regulations if they are deemed necessary. If the Commission believes it must now take further action to assure just and reasonable rates for "0+" calls, it should adopt the infinitely less expensive and less harmful alternative of rate benchmarks, a course followed by the Tariff Division two years ago to great effect.

Finally, if the Commission decides to ignore the overwhelming costs of BPP and the extreme adverse consequences for competition, the implementation of BPP must be tailored to minimize the harmful consequences. Specifically, full balloting must be required to ensure the system is truly one of billed party preference. Further, to achieve national uniformity of dialing arrangements, and to reduce consumer confusion, intraLATA calls must be included in any BPP system. And, to promote full competition, 14-digit screening must be mandatory. Finally, cost recovery must be placed on BPP calls alone as only they will derive even marginal benefit from BPP.

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[3] Final Report of the FCC Pursuant to the Telephone Operator Consumer Services Improvement Act of 1990, Nov. 13, 1992 ("TOCSIA Report").

The costs should not be borne by consumers who continue to use access codes and thus make no use of BPP.

II. THE *FNPRM*'S COST-BENEFIT ANALYSIS IS FLAWED

The FCC has stated that it intends to implement BPP only in the event that its benefits outweigh its costs, and rightly so. In the *FNPRM*, the Commission tentatively reached the conclusion that BPP would yield a net benefit of approximately $200 million. However, the *FNPRM* excluded obvious costs that roughly equal that differential. Further, the *FNPRM* grossly overstated the financial benefits of BPP. A more thorough analysis makes plain that BPP will cost far more than the value it can deliver, thereby removing any economic justification for its implementation.

A. The *FNPRM* Understated the Costs of BPP Implementation.

In the *FNPRM*, the FCC estimated the costs for BPP implementation at about $420 million per year.[4] This estimate included only direct costs to LECs, net of an offset for estimated OSP operator cost savings, of approximately $380 million per year, and direct costs to OSPs of about $35 million per year. However, the full costs to end users, the ultimate purported beneficiaries, were not considered. As the Commission well knows, the amount to be collected from ratepayers is not merely the LEC direct cost, it is the LEC revenue requirement that is derived from those costs. Thus, both

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[4] *FNPRM* ¶ 36.

overhead allocations and a reasonable return on investment must be included when measuring the increased cost to consumers which BPP will impose. This oversight left the *FNPRM* estimates of the impact on callers severely understated.

First, the *FNPRM* acknowledges that it did not include in its cost analysis an estimate of the overheads that LECs would seek to include in charges to billed parties for BPP implementation.[5] This is a glaring error, particularly because the *FNPRM* estimated that 25 percent overheads would be assigned, based upon LEC ex parte filings in this proceeding.[6] Using this estimate, an additional $95 million per year, or one-fourth of the $380 million in LEC costs per year, must be added to the estimate of charges to billed parties caused by BPP.

Second, the LEC revenue requirement must also include provision for a reasonable return on the investment in BPP equipment and software. This cost will be included in rates paid by consumers. At any reasonable rate of return, this factor is likely to add millions of dollars in charges to consumers. For example, applying a

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[5] *Id.* ¶ 27. Because the benefits to end users form the basis for the *FNPRM*'s analysis, all costs to these billed parties must be included in the cost estimates, including contribution levels in BPP charges as well as a reasonable level of return.

[6] *Id.* ¶ 27 n.44. As seen in other proceedings, e.g., ONA implementation and the local transport restructure, some of the RBOCs include overhead loading factors of well over 100%. *See Open Network Architecture Tariffs*, 9 FCC Rcd 440, 457-59 (1994) (BellSouth and US West overhead loadings found to be unreasonably excessive); Petition for Reconsideration of the Competitive Telecommunications Ass'n, CC Docket No. 91-213, at 7 (filed Apr. 4, 1994) (BellSouth and US West had ONA overhead loading factors of as 3.2:1 and 2.3:1, respectively); Petition to Reject of CompTel, CC Docket No. 91-213, Table 9 (filed Oct. 23, 1993) (48% to 80% of tandem revenue requirement allocated to overheads).

12.5 percent rate of return to the $475 million in LEC direct costs and overheads yields an additional $59 million, bringing the total LEC BPP revenue requirement to $534 million annually. These two adjustment alone cause a 36 percent ($150 million) increase in the *FNPRM* estimate.

Third, as discussed in more detail below, CompTel supports the FCC's tentative conclusion that, if BPP is adopted, 14-digit screening is necessary to ensure that all OSPs have the ability to offer line number calling cards.[7] Indeed, any other conclusion would make BPP a drastic technological and competitive step backward. However, the *FNPRM* did not include the costs of 14-digit screening in its cost estimate. The record developed to date indicates that the costs, per RBOC, will be approximately $9 million.[8] As BPP implementation will be required by all LECs (roughly equivalent to nine RBOCs), the total non-recurring costs will be approximately $81 million. Using the *FNPRM*'s amortization factor of 29 percent,[9] 14-digit screening will add approximately $23 million per year in direct costs. Again including overheads of 25 percent and a return of 12.5 percent, the annual revenue requirement from 14-digit screening will be approximately $33 million per year. This estimate

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[7] *See infra* at Section V.C; *FNPRM* ¶ 73.

[8] *FNPRM* ¶ 71. $9 million per LEC is the average of the two cost estimates that have been provided.

[9] *Id.* ¶ 27 n.43.

excludes additional operating and maintenance expenses,[10] which would further increase the estimate of costs associated with 14-digit screening. This translates the BPP LEC cost estimate from the *FNPRM*'s $380 million to an annual LEC revenue requirement of $567 million.

In addition to the costs described above, the *FNPRM* did not account for the costs associated with its tentative conclusion that balloting nationwide should be used to allow end users to select their "0+" carrier.[11] Even using the extremely low end of the range of cost estimates provided by some LECs -- $1.1 to $2.1 million per RBOC[12] -- balloting nationwide is likely to cost LECs approximately $10 to $19 million. Assuming these costs are amortized over five years, 25 percent overheads are added, and a 12.5 percent return is allowed, the additional LEC costs per year for balloting are likely to be in the range of $4.1 to $8.6 million per year, bringing the total estimate of annual costs up to a range of $571 to 576 million.[13]

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[10] *See, e.g.*, Southwestern Bell *ex parte*, CC Docket No. 92-77, Attachment A (filed December 8, 1993) (recurring costs of $1.8 million per year associated with 14-digit screening).

[11] As described below, CompTel supports the FCC's tentative decision to allow subscribers to choose a "0+" primary carrier. *See* Section V.A, *infra.*

[12] *FNPRM* ¶ 62 n.91.

[13] ($10 million x 0.29/yr x 1.25 x 1.125 = $4.1 million/yr; $21 million x 0.29/yr x 1.25 x 1.125 = $8.6 million/yr) This estimate ignores additional costs to OSPs for advertising to end users for selection as their "0+" primary, or possibly secondary, carrier, which the *FNPRM* acknowledges is likely to take place. *FNPRM* ¶ 65.

Finally, the implementation of BPP would effectively strand millions of dollars of equipment and software installed by aggregators to comply with the unblocking requirements of TOCSIA and the FCC. Pursuant to the requirements enacted by the FCC only three years ago, this investment has now been made. (Indeed, the Commission reported to Congress only two years ago that the program was a success.) BPP will render this investment obsolete. The costs of stranded investment of this magnitude cannot simply be ignored -- but that is exactly what the *FNPRM* does.

In sum, the *FNPRM* grossly underestimated the costs of BPP implementation. Its estimate of $420 million per year should be raised to include an additional $187 to $193 million per year for LEC overheads ($95 million on the original $380 million in LEC costs), return on LEC investment of $475 million ($59 million), 14-digit screening ($29-30 million), and balloting ($4-9 million as a most conservative estimate). When these additional costs are considered, total costs associated with BPP implementation will exceed $607 million per year, which is roughly equal to the benefits of $620 million per year estimated by the *FNPRM*. As a result, even before accounting for the overstatement of benefits, BPP will effectively yield no net gain. Significantly, this result excludes the effect of substantial additional costs to billed parties arising from stranded aggregator investment and OSP advertising during the balloting process.

B. The *FNPRM* Overstated the Benefits of BPP.

As just shown, when the costs of BPP are more realistically stated, they roughly equal the purported benefits. However, upon closer scrutiny, it is probable that the FCC's benefits estimate of $620 million per year is itself grossly overstated, for at least three reasons.

First, and potentially most important, the FCC's benefit analysis estimates suffer from seriously overestimating the growth rate for the operator services market. Specifically, the Commission assumes that operator services will grow at a rate equal to the historical rate of 4.3 percent for all toll traffic revenues.[14] Rather, the actual growth rate for operator assisted calling has been far more lethargic. Assuming for sake of illustration that it is more likely to be on the order of two percent over the 1991 to 1997 period, the *FNPRM* estimate of savings through lower rates and reduced commissions may have been overstated by approximately 13 percent. This overstatement of the operator services market segment growth rate alone would require a negative adjustment of $35 million to the $280 million in benefits from reduced rates estimated in the *FNPRM*, leaving $245 million in reduced rates.[15] Additionally, benefits in terms of reduced commissions, before taking into account the effects of payphone compensation requirements and aggregator efforts to recover commissions, as

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[14] *FNPRM* ¶ 11 n.24 (citing Long Distance Market Shares at 12 (FCC Com. Car. Bur., Industry Analysis Div., Sept. 93)).

[15] *Id.* ¶ 11.

discussed below, would be reduced to $330 million, $50 million less than the *FNPRM* estimate of $380 million.[16]

Second, the *FNPRM* ignored the impact of its original pay telephone compensation requirements on the BPP savings in the form of reduced commissions.[17] In 1991, when the studies incorporated into the TOCSIA Report were performed, pay telephone compensation requirements for dial around calls had not yet been imposed on AT&T, MCI, and Sprint. Now that they have been,[18] the impact of the payphone compensation obligations must be integrated into the benefit analysis. The *FNPRM*, however, only accounted for one-half of the costs in its Appendix B analysis. Specifically, the *FNPRM* accounted for a payphone compensation obligation in addition to that adopted in 1992 of $6 per phone, but it failed to include the initial obligation of $6 per phone.[19] Thus, the correct figure should be $12 per phone, not $6 as used by the *FNPRM*. Thus, even accepting the *FNPRM*'s own estimate of payphone compensation increases in its Appendix B, the saved payphone commission payments should have been reduced by $44 million to account for payphone compensation

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[16] *See id.*, App. B ¶ 3. This result comes from the fact that the assumed lower growth rate of two percent leads to a 1997 revenue figure of $6.9 billion, rather than the $7.9 billion in the *FNPRM*.

[17] *Id.* ¶ 12.

[18] *See Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation*, 7 FCC Rcd 3251 (1992) ("*Payphone Compensation*"), *recon.* 8 FCC Rcd 2863 (1993).

[19] *See FNPRM*, App. B ¶ 4.

obligations, not by only $22 million. Making this reduction from the $330 million result obtained in the previous paragraph leaves only $286 million in reduced-commissions benefits.[20]

Third, the *FNPRM* analysis also assumes that aggregators, particularly hotels and motels, will choose not to impose new or increased fees directly on callers themselves to make up for lost OSP commissions. It is far more likely that many or all aggregators, particularly hotels and motels, are likely to recover the costs for these lost commissions through charges for the use of room telephones or through increases in the prices for other accommodation services, reducing the potential benefits from BPP even further.[21] Even if only 50 percent of the remaining $286 million in "saved" commissions are recovered through other means, this will depress the supposed "savings" by at least an additional $143 million, leaving, in the final analysis, approximately $143 million "savings" in reduced commissions.[22]

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[20] This number was reached by taking the above described adjustment to *FNPRM*'s initial estimate of $380 million in eliminated commissions due to BPP, *FNPRM*, App. B, -- *i.e.*, $330 million -- subtracting the $22 million as a result of the expected *additional* payphone compensation requirements, *id.*, and then subtracting another $22 million for the initial payphone compensation requirements as noted in the previous paragraph.

[21] Moreover, many OSPs view commissions as compensation to the hotels and motels for advertising and publicity. In a BPP environment, OSPs are likely to use much of the money "saved" on commissions to promote their services, rather than simply pass them along to end users, as the FCC assumes.

[22] *See* Frost & Sullivan, Inc., *Report on Applicability and Costs of Billed Party Preference: A Market Impact Report*, at 2, 18-22 (Oct. 1993), filed as an *ex parte* filing
(continued...)

Thus, it appears that the FCC overestimated the benefits of BPP by over $200 million. As the above discussion demonstrates, the FCC ignored the effect of its original payphone compensation order on reduced commissions, unrealistically assumed that aggregators will not try to recover the monies from lost commissions, and assumed an overly generous growth rate for operator services. Accordingly, not only do the restated costs equal the purported net benefit, but BPP will arguably yield a net cost of well over $200 million.

In sum, once all factors are considered, it is clear that BPP will not return a value sufficient to offset its huge cost. This more refined analysis totally eliminates the economic justification for BPP.

III. THE *FNPRM* COMPETITIVE ANALYSIS IS FLAWED

Not only does the *FNPRM*'s cost-benefit analysis obscure the likelihood that BPP implementation will fail to yield net benefits, the *FNPRM* fails to account fully for the adverse consequences of BPP on competition in several respects. The *FNPRM* misstates or ignores the impact on smaller IXCs, competitive access providers ("CAPs"), intraLATA competition, and competitive payphones.

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[22](...continued)
in CC Docket No. 92-77 on November 22, 1993 ("Frost & Sullivan") ("While BPP would cause the level of these commissions to drop, consumer savings would be largely offset by increases in location-specific surcharges and dial-around compensation payments to payphone owners, as well as reduced availability of payphones and services." *id.* at 2.)

Indeed, the reality is that BPP will undermine an increasingly successful "0+" marketplace. In lieu of the current hundreds of network-based and CPE-based providers of operator services, there will ultimately be monopoly LECs and just a few national IXCs. In short, BPP is seriously anti-competitive.

A. BPP Would Create Significant Barriers to Entry for Smaller IXCs.

The *FNPRM* observes that BPP would "force OSPs to redirect their competitive efforts away from aggregators and toward end users."[23] As a result, successful entry into the interLATA "0+" marketplace would require OSPs to have a national presence in order to attract consumers, whose travels in our increasingly mobile society may take them to virtually anywhere in the United States. While the FCC contemplates the use of a back-up "secondary" carrier for non-nationwide IXCs to give them such a presence, the nature of calling by travelers is such that the majority of calls "on the road" would be defaulted to the OSP's secondary carrier. Moreover, given their national name recognition and huge advertising budgets, end users are more likely to select AT&T, MCI or Sprint as their OSP in a BPP environment. The result will be to end the current ability of IXCs offering operator services to start as small regional carriers and grow into full service IXCs.

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[23] *FNPRM* ¶ 12.

In the current presubscription environment, where the choice of IXC lies with the aggregators, small OSPs are able to market their services to a limited number of buyers, each of which delivers a substantial volume of traffic. This environment permits marketing and regional operation on a scale that encourages and nurtures small and start-up IXCs. For example, U.S. Long Distance of San Antonio, Texas ("USLD"), a CompTel member, began operating as an OSP in 1988. In 1993, USLD had $100 million in annual revenues,[24] and offered both "0+" and "1+" service. Its "1+" call minutes represented approximately two-thirds of its total traffic, which is concentrated in Texas and a few other regions.

BPP, on the other hand, will require both national network coverage and mass marketing. In order to serve as an end user's primary carrier, an IXC will require the ability to originate traffic nationwide. Similarly, to establish a customer base, IXCs will have to advertise directly to end users on a national basis, whereas in the current environment, their efforts could be targeted far more efficiently to aggregators, who in turn would make end users aware of the IXC providing the service. IXCs other than the "big three" face formidable marketing opponents: in the first six months of 1993, for example, AT&T was reported to have spent $280 million in advertising, MCI $97.5 million, and Sprint $62.3 million.[25] Even the smallest of these figures exceeds the

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[24] This excludes revenues from USLD's subsidiary, Zero Plus Dialing, Inc.

[25] Crain's New York Business, Nov. 15, 1993, at 45. Notably, AT&T spent more for the first half of 1993 for advertising than any other corporation in the United States. *Id.*

entire gross revenues of most OSPs for the same period. Clearly, BPP is a formula for tilting the market against small businesses and in favor of the few established national carriers.

Before taking actions that will certainly create both significant entry barriers for start up IXCs and difficulties for many existing OSPs to remain in business, the FCC should consider the alternatives to BPP that will not force such a result. At bottom, the FCC's concern in this proceeding is not so much that some billed parties do not get to choose the carrier of their choice, but that some are not pleased with the rates they are sometimes charged. Any unhappiness with rates can be addressed, in large part, by increasing the ability of end users to reach the carrier of their choice. This is being accomplished already, however, through the protections of TOCSIA, including unblocking (10XXX, 800-, and 950- and access codes), branding, and informational posting requirements on payphones.[26] Any residual problems can be addressed through a rate benchmark, as discussed below.

B. BPP Will Harm Competition in the Special Access and IntraLATA Markets.

By its own admission, the *FNPRM* does not consider the potential negative impact of BPP on the ability of CAPs to compete for interLATA traffic. The record developed to date suggests that, under BPP, all "0+" traffic will be routed through the

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[26] *See* note 73, *infra*.

LECs' operator service switch ("OSS"), where the billed party's OSP would be identified.[27] The *FNPRM* contemplates that billed party preference verification information would be contained in a proprietary line identification data base to be administered by the LECs. Even if a CAP theoretically could route the billed party information to the LECs for verification, it would still be required to forward the call to the LEC whenever the IXC chosen was not a subscriber to service from the CAP. Only the LECs will be properly interconnected with all IXCs, and thus only the LECs could provide BPP services. By requiring that virtually all "0+" traffic be sent to LECs for routing, BPP will effectively keep CAPs out of the "0+" marketplace.

The importance of this fact to CAPs goes beyond "0+" calling to impact the overall market for special access services. By forcing all "0+" calls to the LEC, BPP would force a splitting of aggregator "0+" traffic and "1+" traffic if "1+" special access were to be provided by a CAP. The added expense and inconvenience of such a split will shift the balance of special access business to the LECs, who would not need to impose such a limitation on customers purchasing access. Such a development obviously would damage the CAPs' competitive position. This result runs contrary to

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[27] *FNPRM* ¶ 5; Billed Party Preference for 0+ InterLATA Calls, 7 FCC Rcd 3027, 3028-29 (1992) (Notice of Proposed Rulemaking) ("Notice"). If CAPs are not required to route "0+" traffic to the LECs, then BPP is not likely to be uniformly available, undermining one of the principal benefits of BPP. *See* Section IV.A, *infra*.

the efforts of the FCC and the Congress to introduce local competition through expanded interconnection and unbundled local transport rates.[28]

C. BPP Would Harm Payphone Competition.

BPP also would injure competition in the payphone industry, which is still largely dominated by LEC payphones.[29] The system of commission payments to owners of customer-owned-coin-operated telephones has played a critical role in the development of the competitive payphone industry. For most competitive payphones, local call revenues do not cover the cost of terminating such calls, let alone the costs of providing the payphone itself. Owners of competitive payphones therefore rely on commission payments from operator assisted long distance calls to recover the installation and maintenance costs associated with providing their service.[30]

The elimination of "0+" commissions paid to providers of competitive payphones would threaten the viability of the principal alternative to LEC payphones.

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[28] *See, e.g., Expanded Interconnection with Local Telephone Company Facilities*, FCC 94-140, ¶ 1 & nn.1, 11-13 (July 25, 1994); *Transport Rate Structure and Pricing*, 7 FCC Rcd 7006, 7007 (1992) (subsequent history omitted). On June 28, 1994, H.R. 3636 (sponsored by Reps. Fields and Markey), which would set new rules for local competition, passed the House of Representatives. H.R. 3636 has been incorporated into the Antitrust and Communications Reform Act of 1994, H.R. 3626, 103d Cong., 2d Sess., which also passed the House the same day.

[29] *See Payphone Compensation*, 7 FCC Rcd at 3251 (only 200,000 of 1.8 million payphones are non-LEC phones). The *FNPRM* estimate of competitive payphones is 300,000. *See FNPRM*, App. B.

[30] *See* Reply Comments of the Competitive Telecommunications Ass'n, CC Docket No. 92-77, at 25 (filed Aug. 27, 1992) ("CompTel Reply Comments").

As the California Payphone Association explained earlier in this proceeding, BPP would not cause a corresponding loss of payphone revenue for the LECs.[31] Under BPP, LECs could continue to pay their same level of commissions to premises owners and thereby gain a significant advantage over competitive payphone providers for individual locations, leading to a substantial lessening of competition in the payphone market.

Further, the *FNPRM* effectively proposes to ban the use of "smart" payphones,[32] upon which many call aggregators increasingly rely. These devices enable the originating pay telephone or PBX to collect calling card information from "0+" callers and then place the call as a "1+" type call. The LEC perceives the call as such, and routes it to the IXC presubscribed at that location. If such "0+" calls are to be covered by BPP, all "0+" calls will have to be routed to the LECs and these "smart" payphones will no longer be useful. All the expensive intelligence built into the payphones will be bypassed by BPP as calls are sent directly to the LEC. This requirement will eliminate yet another source of competition to LEC payphones. This result would also impose additional costs on BPP implementation, as thousands of payphones at hotels, motels, restaurants, and correctional institutions will have to be removed or modified.

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[31] California Payphone Ass'n Comments, CC Docket No. 92-77, at 4 (filed July 7, 1992).

[32] *FNPRM* ¶ 82.

In the end, BPP may lead to a decline in both the number and availability of payphones overall. Thus, consumers would be the ultimate losers, as they have come to rely on the easy accessibility of payphones in public places.

IV. THE *FNPRM* SERIOUSLY UNDERESTIMATES THE TECHNICAL SHORTCOMINGS OF BPP

A. BPP Will Make National Dialing Uniformity Worse, Not Better.

In the original Notice, the Commission concluded that the objective of simplified operator assisted dialing requirements could only be achieved "if dialing requirements were uniform across the country."[33] This objective of "uniform nationwide 0+ and 0- calling rules" was reiterated in the *FNPRM*.[34] However, even if all LECs are required to implement BPP and traffic aggregators and payphone providers are precluded from using automated dialing mechanisms to dial around BPP, as contemplated in the *FNPRM*, dialing requirements for operator assisted calls will not be nationally uniform. Indeed, there are a plethora of calls that will not be covered by BPP:

- intraLATA calls;
- calls charged to international calling cards;

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[33] *Notice*, 7 FCC Rcd at 3032.

[34] *FNPRM* ¶ 47.

- calls charged to commercial credit cards;[35]
- calls charged to IXC calling cards that are not in the LIDB database;[36]
- calls from locations where the preferred carrier does not have a presence;[37]
- calls made from inmate phones;[38]
- calls from LEC locations not covered by equal access; and
- calls from smart payphones.[39]

In combination, these situations ensure that BPP will be unavailable in many "0+" dialing circumstances and at many locations. Indeed, these are some of the locations where "0+" dialing is most prevalent. Accordingly, BPP will fall far short of making dialing requirements uniform nationwide.

As a result, consumers will often have no way of determining in advance where billed party preference applies and where it does not. Few members of the public know whether their call is intraLATA or interLATA, for example. This lack of

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[35] The FCC fails to explain adequately how such credit card calls could be included in BPP, although it tentatively concludes that BPP should apply thereto. *See id.* ¶ 80.

[36] *See id.* ¶¶ 5-6.

[37] Unless end users choose their secondary carrier through balloting, it would be the primary carrier that would choose the secondary carrier, not the billed party.

[38] As explained below, concerns about fraud counsel strongly against use of BPP for telephones in correctional facilities provided for inmate use.

[39] This source of non-uniformity may be eliminated by banning these payphones, in which case a primary source of competition for LEC payphones will be destroyed. *See* Section III, C, *supra*.

uniformity is bound to be frustrating to callers. Further, if BPP is implemented, the national IXCs may deemphasize the current use of carrier access codes, yet another change in direction which only would serve to confuse end users further. Notably, the fact that the BPP system cannot be used in so many situations and from so many aggregator locations also further reduces the number of callers who really benefit from BPP and the level of overall value of perceived benefits discussed above.

B. The *FNPRM* Understates the Problem of Double Operators.

The *FNPRM* avers that a principal benefit of BPP is that it will increase dialing ease for end users.[40] Theoretically, this benefit may be achieved wherever BPP is available, which, as explained above, will be far from everywhere or for all calls.[41]

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[40] *FNPRM* ¶¶ 9, 10.

[41] In actuality, the benefit of increasing dialing ease will apply to only a fraction of the calls to which BPP would be applicable. Specifically, only on those calls where a caller now selects a carrier through use of dial around codes will callers possibly benefit from BPP in this way. In 1991, according to the TOCSIA Report, 69 percent of "away-from-home" operator services traffic did not involve dial around access. TOCSIA Report, Attachment N at 17, Table 4 ($1.9 billion of $6.1 billion "away-from-home" revenues were from dial around calls).

The percentage of such calls among all "0+" calls was probably much higher, as almost one-third (32.2 percent) of OSP calls were made from residences. *Id.* Assuming conservatively that 80 percent of "at-home" operator assisted calls were not made using dial around access codes, then 72.4 percent of all operator services calls were made without access codes and thus would not stand to benefit from BPP in terms of dialing ease.

(continued...)